

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

DEMETRIUS L. HARVEY,

No. C 07-01681 SBA

Plaintiff,

ORDER

v.

[Docket No. 66]

CITY OF OAKLAND, et al.,

Defendants.

REQUEST BEFORE THE COURT

Before the Court is Plaintiff's "*Ex Parte* Motion for Continuance of Discovery." [Docket No. 66]. For the following reasons, the Court DENIES the motion.

On September 4, 2008, Plaintiff filed an *ex parte* motion to extend the discovery deadline from September 2, 2008 to 45 days from filing the motion. Plaintiff's reason for extending the discovery deadline is that he believes he has not received documents he has already requested and needs "other discovery to utilize during depositions of defendants and other individuals who are involved in this case." [¶¶ 6-7].

Plaintiff's motion is denied for three reasons. First, the motion is untimely. Plaintiff filed the motion *after* the discovery cut-off date of September 2, 2008. Second, Plaintiff has not complied with the local rule governing *ex parte* motions. Local Rule 7-10 requires a party to: (1) state the "statute, Federal Rule, local rule or Standing Order" that authorizes filing a motion without notice to the opposing party in the circumstances; and (2) show he has complied with the applicable provisions allowing the party to approach the Court on an *ex parte* basis. Plaintiff has not shown good cause for an *ex parte* motion. Third, Plaintiff has not shown good cause for prolonging the discovery period. Federal Rule of Civil Procedure 16(b)(4) allows a schedule to be "modified only for good cause and with the judge's consent."

Defendant, although never served with the motion, nevertheless filed an opposition to the motion noting the procedural defects discussed above, as well as opposing it on the merits. [Docket

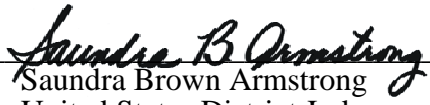
1 No. 68]. Defendants state that substantial discovery has taken place within the deadline. Defendant
2 responded to Plaintiff's two requests for production in January and July 2008. Defendant responded
3 to five sets of Requests for Admission. Defendant deposed the plaintiff in Fresno, CA within the
4 discovery period. Defendant further states Plaintiff has all of the documents which it will rely upon
5 in bringing its motion for summary judgment. Finally, Defendant's ability to bring a dispositive
6 motion by the hearing date on October 21, 2008, will be prejudiced by Plaintiff's last minute request
7 to extend the discovery period.

8 Defendant opposes the motion. [¶¶ 3,6, 7-8, 12].

9 Accordingly, the Court DENIES the Ex Parte Motion for Continuance of Discovery.

10 IT IS SO ORDERED.

11
12 September 15, 2008

13 
14 Saundra Brown Armstrong
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28